

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SERGEI KOVALEV,

Plaintiff,

v.

CITYLIFE-PA, PC a/k/a CITYLIFE HEALTH,
CITYLIFE HEALTH, LLC, AMPERSAND
HEALTH-PA, LLC, TIMOTHY M. PETRIKIN a/k/a
TIM PETRIKIN, and MPULSE MOBILE, INC.,

Defendants.

Case No. 22-CV-1281

ANSWER AND AFFIRMATIVE DEFENSES

Defendant mPulse Mobile, Inc. (“mPulse”), by and through its undersigned counsel, hereby files this Answer and Affirmative Defenses in response to the Complaint filed by Plaintiff Sergei Kovalev (“Plaintiff”).

1. Denied. The content of this paragraph is generally denied as being a summary of the allegations of the Complaint, taken as a whole, which speaks for itself. mPulse incorporates by reference the entirety of its Answer to Plaintiff’s Complaint as if set forth at length herein. By way of further response, to the extent this paragraph asserts conclusions of law, no response is required.

2. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law, no response is required.

3. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law, no response is required.

4. Denied. The content of this paragraph is generally denied as being a summary of the allegations of the Complaint, taken as a whole, which speaks for itself. mPulse incorporates

by reference the entirety of its Answer to Plaintiff's Complaint as if set forth at length herein. By way of further response, to the extent this paragraph asserts conclusions of law, no response is required.

5. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

6. mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

7. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

8. It is admitted only that mPulse provides services to customers in Pennsylvania and the City of Philadelphia. All other allegations in this paragraph of the Complaint are denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law, no response is required.

9. Denied. mPulse does not operate or manage health care centers in the City of Philadelphia, nor does it send text messages. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers.

10. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

11. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

12. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

13. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

14. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

15. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

16. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law, no response is required.

17. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

18. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

19. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

20. It is admitted only that mPulse is a corporation formed under the laws of the State of Delaware and maintains a principal place of business at 16530 Ventura Blvd., Suite 500, Encino, California 91436. All other allegations in this paragraph of the Complaint are denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law, no response is required.

21. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

22. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

23. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

24. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

25. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

26. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

27. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

28. Denied as stated. The allegations in this paragraph of the Complaint do not appear directed toward mPulse and, after reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of these allegations.

29. It is admitted only that mPulse is a corporation formed under the laws of the State of Delaware. All other allegations in this paragraph of the Complaint constitute conclusions of law to which no response is required. To the extent any of these allegations are deemed factual, they are denied.

30. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

31. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

32. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

33. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

34. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

35. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

36. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint.

37. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

38. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

39. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

40. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

41. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

42. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

43. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

44. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

45. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

46. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph

of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

47. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

48. This paragraph of the Complaint refers to a document that speaks for itself and any incomplete, inaccurate, or misleading references or citations thereto are denied.

49. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

50. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

51. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

52. This paragraph of the Complaint refers to a writing that speaks for itself and any in-complete, inaccurate, or misleading references or citations thereto are denied.

53. Denied. By way of further answer, to the extent the allegations set forth in this paragraph of the Complaint constitute conclusions of law to, no response is required. Moreover, to the extent this paragraph of the Complaint refers to a writing, it speaks for itself and any incomplete, inaccurate, or misleading references or citations thereto are denied.

54. Denied. By way of further answer, to the extent any allegations in this paragraph of the Complaint constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

55. Denied. By way of further answer, to the extent any allegations in this paragraph of the Complaint constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

56. Denied. mPulse was not an agent of CityLife or Ampersand. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

57. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

58. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

59. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

60. Denied as stated. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

61. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

62. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint and therefore denies the allegations. By way of further answer, to the extent this paragraph of the Complaint refers to a writing, it speaks for itself and any incomplete, inaccurate, or misleading references or citations thereto are denied.

63. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

64. Denied. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

65. Denied. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

66. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

67. Denied. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

68. This paragraph of the Complaint refers to writings, which it speaks for themselves and any incomplete, inaccurate, or misleading references or citations thereto are denied.

69. Denied as stated. mPulse does not make calls; it merely is a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

70. Denied as stated. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

71. Admitted.

72. Denied as stated with regard to mPulse. After reasonable investigation, mPulse is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint regarding other Defendants.

73. Denied. By way of further answer, to the extent this paragraph of the Complaint states conclusions of law or is directed at parties other than mPulse, no response is required.

74. It is admitted only that mPulse provides an online platform through which unrelated entities are able to initiate text messages to their legitimate subscribers. All other allegations in this paragraph of the Complaint are denied.

75. It is admitted only that mPulse provides an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to legitimate subscribers. All other allegations in this paragraph of the Complaint are denied.

76. mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint because it was not a party to the alleged conversation, and therefore denies the allegations. By way of further answer, to the extent this paragraph of the Complaint concerns Defendants other than mPulse, no response is required.

77. Denied. mPulse does not make calls; it merely is a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent this paragraph of the Complaint asserts conclusions of law or directed to a party or parties other than mPulse, no response is required.

78. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

79. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

80. mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint because it was not a party to the alleged conversation, and therefore denies the allegations.

81. Denied as stated. mPulse merely provides an online platform through which unrelated entities are able to initiate text messages to their legitimate subscribers. mPulse is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Complaint and denies the allegations.

82. It is admitted only that Plaintiff is not a customer of mPulse. All other allegations in this paragraph of the Complaint are denied. By way of further answer, after reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of Plaintiff's alleged timing of conducting an internet search about CityLife clinics.

83. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

84. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

85. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

86. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

87. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

88. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

89. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

90. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

91. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

92. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

93. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

94. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

95. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

96. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

97. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

98. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

99. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

100. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

101. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

102. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent the allegations are deemed factual, they are denied.

103. It is admitted only that mPulse is not Plaintiff's healthcare provider. mPulse is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph of the Complaint and therefore denies those allegations.

104. It is admitted only that mPulse is not Plaintiff's healthcare provider. mPulse is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph of the Complaint and therefore denies those allegations.

105. It is admitted only that mPulse was not acting on behalf of any healthcare provider or other entity. mPulse is merely a provider of an online platform through which unrelated entities

are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, mPulse is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph of the Complaint and therefore denies those allegations.

106. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

107. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

108. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

109. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers.

110. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

111. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

112. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

113. This paragraph of the Complaint refers to writings that speaks for itself and any incomplete, inaccurate, or misleading references or citations thereto are denied. By way of further answer, to the extent any allegations in this paragraph constitute are directed to a party or parties other than mPulse, no response is required.

114. It is admitted only that mPulse was not Plaintiff's healthcare provider and was not acting on behalf of any healthcare provider or other entity. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph of the Complaint because mPulse was not a party to the alleged conversation, and therefore denies the allegations.

115. Denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

116. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

117. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

118. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

119. Denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

120. Denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

121. Denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

122. Denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

123. Denied. By way of further answer, mPulse is without knowledge and information sufficient to form a belief as to Plaintiff's definition of "very significant" and therefore denies the allegation. Moreover, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

124. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

125. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

126. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

127. The allegations of this paragraph of the Complaint refer to portions of the Telephone Consumer Protection Act (“TCPA”), the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

128. The allegations of this paragraph of the Complaint refer to portions of the TCPA, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

129. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

130. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

131. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

132. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

133. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

134. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

135. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

136. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

137. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint because mPulse was not a party to the alleged conversation, and therefore denies the allegations.

138. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

139. Denied. mPulse did not “use[] equipment.” mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

140. Denied. mPulse did not make “telephone calls contained text messages” to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

141. It is admitted only that mPulse did not have a business relationship with Plaintiff. All other allegations in this paragraph of the Complaint are denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

142. It is admitted only that Plaintiff is not a customer of mPulse. All other allegations in this paragraph of the Complaint are denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required. Further, mPulse is without knowledge and information sufficient to form a belief as to the truth of Plaintiff's allegation about when he conducted an internet search about CityLife clinics and therefore denies the allegation.

143. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

144. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

145. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

146. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

147. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

148. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

149. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

150. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

151. The allegations of this paragraph of the Complaint refer to portions of the TCPA, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

152. The allegations of this paragraph of the Complaint refer to portions of the TCPA, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

153. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations. By way of further answer, to the extent this paragraph of the Complaint refers to a writing, it speaks for itself and any incomplete, inaccurate, or misleading references or citations thereto are denied.

154. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

155. The allegations of this paragraph of the Complaint refer to portions of the TCPA, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

156. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

157. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

158. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

159. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

160. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

161. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

162. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

163. It is admitted only that mPulse is not registered as a telemarketer with the Office of Pennsylvania Attorney General. All other allegations in this paragraph are denied. By way of further answer, to the extent any allegations in this paragraph are conclusions of law or are directed to a party or parties other than mPulse, no response is required.

164. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

165. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied. By way of further answer, to the extent this paragraph of the Complaint refers to portions of the Pennsylvania Telemarketer Registration Act, the Act's provisions speak for themselves, and any misstatement, mischaracterization, or misquotation of those provisions are denied.

166. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

167. Denied. mPulse did not make “calls/text messages” to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

168. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

169. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied. By way of further answer, to the extent this paragraph of the Complaint refers to portions of the Pennsylvania Telemarketer Registration Act, the Act’s provisions speak for themselves, and any misstatement, mischaracterization, or misquotation of those provisions are denied.

170. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

171. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

172. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

173. Denied. mPulse did not make any telephone calls to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer,

after reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of Plaintiff's claims about his interest in CityLife's services. Moreover, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

174. Denied. mPulse did not make any telephone calls to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

175. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

176. The allegations of this paragraph of the Complaint refer to portions of the Pennsylvania Telemarketer Registration Act, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

177. The allegations of this paragraph of the Complaint refer to portions of the Pennsylvania Telemarketer Registration Act, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

178. Denied. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

179. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

180. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

181. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

182. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

183. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

184. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

185. The allegations of this paragraph of the Complaint refer to portions of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTCPL"), the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

186. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

187. The allegations of this paragraph of the Complaint refer to portions of the Pennsylvania Telemarketer Registration Act, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

188. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. By way of further answer, to the extent this paragraph of the Complaint refers to portions of the Pennsylvania Telemarketer Registration Act and the UTCPL, those

provisions speak for themselves, and any misstatement, mischaracterization, or misquotation of those provisions are denied.

189. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

190. After reasonable investigation, mPulse is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph of the Complaint and therefore denies the allegations.

191. Denied. mPulse did not make any telephone calls or send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

192. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

193. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

194. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

195. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

196. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

197. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

198. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

199. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

200. Denied. mPulse did not send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

201. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required.

202. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

203. Denied. mPulse did not send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

204. Denied. mPulse did not send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer,

to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

205. Denied. mPulse did not send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

206. Denied. Plaintiff did not call mPulse on December 23, 2019. By way of further answer, mPulse is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations because it was not a party to the alleged conversation, and therefore denies the allegations. Moreover, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

207. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

208. It is admitted only that Plaintiff did not have a business relationship with mPulse. All other allegations in this paragraph of the Complaint are denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

209. Denied. mPulse did not send any text messages to Plaintiff. mPulse is merely a provider of an online platform through which unrelated entities are able to manage their own subscriber lists and initiate text messages to their legitimate subscribers. By way of further answer,

to the extent any allegations in this paragraph are directed to a party or parties other than mPulse, no response is required.

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211. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

212. In response to this paragraph of the Complaint, mPulse incorporates by reference its responses to the other paragraphs of Plaintiff's Complaint, as well as its Affirmative Defenses.

213. The allegations in this paragraph of the Complaint are conclusions of law to which no response is required. To the extent they are deemed factual, they are denied.

214. Denied. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

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266. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

267. The allegations of this paragraph of the Complaint refer to portions of the Pennsylvania Code, the full provisions of which speak for themselves. To the extent that these allegations misstate, mischaracterize, or misquote those provisions, mPulse denies those allegations.

268. It is admitted only that Plaintiff's Complaint includes a Count styled as a claim for "Common Law Harassment." All other allegations in this paragraph of the Complaint are denied, and mPulse specifically denies the implication that Plaintiff's Complaint has properly stated such a claim. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

269. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

270. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

271. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

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273. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

274. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

275. mPulse denies the allegations in this paragraph of the Complaint. By way of further answer, to the extent any allegations in this paragraph constitute conclusions of law or are directed to a party or parties other than mPulse, no response is required.

AFFIRMATIVE DEFENSES

Defendant mPulse sets forth below its affirmative defenses to the Complaint. By setting forth these affirmative defenses, mPulse does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to the allegations of Plaintiff. mPulse has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated,

affirmative defenses available in this action. mPulse therefore reserves the right to assert additional affirmative defenses in the event it later discovers that they may be appropriate.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to allege sufficient facts to state a claim against mPulse upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff lacks standing to pursue the claims alleged against mPulse. Plaintiff has not been harmed or suffered an "injury in fact" by the alleged conduct at issue regardless of whether he seeks statutory damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff seeks to hold mPulse liable for statements made or actions taken by persons or entities other than mPulse, who were not acting as authorized agents of mPulse, nor for whom mPulse was acting as an authorized agent.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim under 47 U.S.C. § 227(c) is barred because mPulse has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under the TCPA.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of unclean hands, waiver, estoppel, laches, mistake, and/or release.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff is or was required to exhaust any administrative remedies before pursuing this action but failed to do so, such failure bars this action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff cannot satisfy the requirements for injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

mPulse denies that Plaintiff has suffered any damages for which mPulse is responsible. Any alleged texts were sent by others, and mPulse is not vicariously liable for their conduct. Any purported damages to Plaintiff, which mPulse continues to deny, would be the result of the acts or omissions of persons or entities over whom mPulse has neither control nor responsibility.

NINTH AFFIRMATIVE DEFENSE

Count III of the Complaint is barred because the Pennsylvania Telemarketer Registration Act does not provide for a private cause of action.

TENTH AFFIRMATIVE DEFENSE

Count VIII of the Complaint is barred because Pennsylvania does not recognize a cause of action for gross negligence.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to allege facts sufficient to form a basis for a punitive damages award for any cause of action.

TWELFTH AFFIRMATIVE DEFENSE

There is no basis upon which Plaintiff can recover attorneys' fees.

THIRTEENTH AFFIRMATIVE DEFENSE

The damages sought by Plaintiff are not available for the causes of action alleged.

FOURTEENTH AFFIRMATIVE DEFENSE

No act or omission of mPulse was a substantial factor in bringing about the damages alleged, nor was any act or omission of mPulse a contributing cause thereof. Any alleged acts or omissions of mPulse were superseded by the acts or omissions of others, including Plaintiff or other third parties named or not named in the Complaint, which were the independent, intervening and proximate cause of any damage or loss allegedly sustained by Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

Under Pennsylvania law, Plaintiff is not entitled to a jury trial on his claims alleging violations of the UTPCPL.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff assisted, directed, ordered, approved and/or ratified the alleged conduct by, *inter alia*, specifically requesting or consenting that text messages be sent to him.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint and each cause of action contained therein are barred because Plaintiff provided prior express consent, through an established business relationship or otherwise, that he be contacted on his cell phone number.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint and each cause of action contained therein are barred because Plaintiff had a duty to take reasonable steps to mitigate and/or avoid his alleged damages. Plaintiff failed to take any steps or delayed unreasonably in doing so. Had Plaintiff timely and diligently taken reasonable steps to mitigate and/or avoid his alleged damages, such alleged damages, if any, would have been reduced or avoided altogether.

NINETEENTH AFFIRMATIVE DEFENSE

mPulse’s online platform is not an “automatic telephone dialing system” under the TCPA. The platform did not and does not use a “random or sequential number generator” to store or produce telephone numbers and/or the lacks the capacity to generate and dial random or sequential numbers.

TWENTIETH AFFIRMATIVE DEFENSE

The Complaint and each cause of action contained therein may be barred as to any alleged text messages received by Plaintiff where the text messages were not charged to him (*e.g.*, unlimited cell phone plans). *See, e.g.*, 47 U.S.C. §227(b)(2)(C).

WHEREFORE, mPulse Mobile, Inc. respectfully requests judgment in its favor and against Plaintiff, plus costs, attorneys’ fees and such other relief as the Court may deem just and proper.

Dated: April 11, 2022

Respectfully submitted,

/s/ Joseph M. Baker

Joseph M. Baker
joseph.baker@us.dlapiper.com
1650 Market Street, Suite 5000
Philadelphia, PA 19103-7300
Phone: (215) 656-3300
Fax: (215) 606-3301
Counsel for Defendant mPulse Mobile, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2022, I served the foregoing Answer and Affirmative Defenses via the electronic filing service system of the United States District Court for the Eastern District of Pennsylvania, and that a copy was served via U.S. First Class Mail on the following:

Sergei Kovalev
5305 Oxford Avenue
Philadelphia, PA 19124

/s/ Joseph M. Baker

Joseph M. Baker